

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

19 The parties to the above-captioned matter submit this Joint Case Management  
20 Conference Statement. This matter was originally assigned to Magistrate Judge Edward  
21 Chen, then reassigned to the Honorable Martin J. Jenkins on August 31, 2007. This matter  
22 was subsequently reassigned to this Honorable Court on February 15, 2008.

23        The undersigned certify that they are the lead counsel who will try this case and that  
24        they have met and conferred for the preparation of this Statement as required by Local Rules  
25        of Court.

## 1. Jurisdiction and Venue

Mr. Garrett has filed suit for negligence pursuant to the Jones Act, 46 U.S.C. §§ 688 et. seq., unseaworthiness, and maintenance and cure pursuant to the general maritime law,

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1 and 28 U.S.C. § 1333 against Maersk Line Ltd. and the vessels *M/V Sea-Land Explorer* and  
2 *M/V Sea-Land Meteor*. Jurisdiction and venue is proper within this district. The vessels  
3 have not yet been served with process.

4 The plaintiff originally named U.S. Ship Management, Inc., and Sea-Land Services,  
5 Inc., as additional defendants in this action. The parties submitted a stipulated dismissal of  
6 those defendants to the Court and the Order dismissing those defendants, without prejudice,  
7 was filed on September 11, 2007.

## 8 | 2. Facts

9           This is a Jones Act and general maritime law personal injury action brought by  
10          Samuel Garrett as the result of two separate incidents aboard two of the defendant's vessels  
11          during the course and scope of his employment. The first incident was alleged to have  
12          occurred on or about June 28, 2004 when the plaintiff contends he injured his left thumb  
13          while opening a door. The second incident occurred on about February 23, 2005 when the  
14          plaintiff suffered steam burns to both forearms while performing work in the *M/V Sea-Land*  
15          *Meteor*'s engine room.

16 The factual issues in dispute include the following:

17                   1) The circumstances and causes of the injuries the plaintiff claims he  
18                   suffered.

19                   2) The nature and extent of plaintiff's injuries and disability.

20                   3) The nature and extent of plaintiff's wage loss claim.

21                   4) The nature and extent of plaintiff's medical expense claim.

22                   5) The parties reserve the right to supplement this list as facts become  
23                   known through discovery.

### 24 | 3. Legal Issues

25 || The legal issues in dispute include the following:

26                   1)    Whether the defendant, was negligent.

27                   2)    Whether the *M/V Sea-Land Meteor* was unseaworthy.

28                   3)    Whether the *M/V Sea-Land Explorer* was unseaworthy.

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- 4) Whether the plaintiff was negligent.
- 5) The parties reserve the right to supplement this list as facts become known through discovery.

## 4. Motions

There are no currently pending motions. The parties do not anticipate filing any motions at this time.

## **5. Amendment of Pleadings**

At this time the defendant intends to file an Amended Answer to the Complaint. The parties have stipulated to the filing of the Amended Answer. The parties do not anticipate any further amendment of the pleadings at this time. However, the parties previously agreed that the plaintiff, at his sole discretion, will be entitled to further amend the Complaint naming U.S. Ship Management, Inc., and Sealand Services, Inc., [the defendants which were previously dismissed] as individual defendants should he conclude in good faith that the evidence warrants his including those two defendants as parties to the action. Any such amendment shall be made, filed and served at least thirty-five (35) days prior to the close of discovery as set by the Court, may be personally served on defense counsel and will require a responsive pleading to be filed by said defendants within two weeks of said service.

## 6. Evidence Preservation

The parties have taken steps to preserve evidence relevant to the issues reasonably evident in this action, including the interdiction of any document-destruction program and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.

## 7. Disclosures

The parties have timely exchanged their initial disclosures pursuant to Federal Rule of Civil Procedure 26, including the identities of potential witnesses and identification [and/or exchange] of documents which may be relevant to the action.

## 8. Discovery

The parties have exchanged their initial sets of written discovery and records from several of the plaintiff's medical providers have been subpoenaed. Discovery will be

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needed on the following subjects: Liability, damages, and medical causation. The parties previously proposed a maximum of 40 interrogatories by each party to any other party; a maximum of 12 depositions by plaintiff and 12 depositions by defendant, with each deposition limited to a maximum of six hours unless extended by agreement of the parties. The Honorable Martin J. Jenkins issued a Pretrial Order limiting the parties to ten depositions per party. The following depositions are anticipated: the plaintiff, the officers and crew the subject vessels, plaintiff's medical providers and expert witnesses.

The parties do not expect any special discovery issues. However, the percipient witnesses to these incidents, including the plaintiff, are all merchant seamen who are often unavailable for long periods of time at sea. In fact, the plaintiff has only recently returned from a shipping rotation during which time he was unavailable for approximately 140 days while working at sea. The scheduling of depositions, therefore may be more difficult than in a typical case due to witness unavailability.

**14. Class Actions**

This is not a class action.

**16. Related Cases**

There are no related cases.

**18. Relief**

The plaintiff seeks general and special damages as a result of the incident in an amount according to proof at trial. The plaintiff also seeks an award of attorneys fees and costs based upon his third claim of relief for maintenance and cure.

**22. Settlement and ADR**

The parties believe that this case is appropriate for referral to a U.S. Magistrate Judge for a Settlement Conference. The Honorable Martin J. Jenkins referred this matter to a Settlement Conference and ordered that it take place by October 2008. The defendant contends that the key discovery to be completed before a meaningful Settlement Conference can take place is the exchange of initial written discovery, the plaintiff's deposition, and the depositions of the plaintiff's primary treating physicians (for the two injuries he is seeking

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1      damages for in this lawsuit). The Plaintiff also anticipates the need to complete one or two  
 2      depositions of yet to be identified fellow crew/officers and possibly the inspection of one or  
 3      both of the vessels prior to the settlement conference. The parties anticipate that the key  
 4      discovery can be completed within 90 to 120 days to allow for a Settlement Conference to  
 5      be completed by October 2008.

6      **13. Consent to Magistrate Judge for All Purposes**

7              The parties do not consent to have a magistrate judge conduct further proceedings.

8      **14. Other References**

9              The parties do not believe that this case is suitable for reference to binding  
 10        arbitration, a special master or to the Judicial Panel on Multidistrict Litigation.

11     **15. Narrowing of Issues**

12        The parties believe it is premature to address a narrowing of issues at this time.

13     **16. Expedited Schedule**

14        The parties do not believe this is the type of case that can be handled on an  
 15        expedited basis given the facts that the action is based upon two alleged incidents aboard  
 16        different vessels, with many different witnesses who are often away at sea for long periods  
 17        of time.

18     **17. Scheduling**

19        The Honorable Martin J. Jenkins in his Pretrial Order filed on October 24, 2007 set  
 20        the following schedule:

21              A ten day jury trial to begin:	November 10, 2008.
22              Pre Trial Conference:	November 4, 2008 at 3:30 p.m.
23              Non-expert discovery cutoff:	August 29, 2008.
24              Designation of experts	September 5, 2008
25              Expert Reports:	September 12, 2008
26              Designation of Supplemental/Rebuttal experts:	September 26, 2008
27              Supplemental/Rebuttal Reports:	September 26, 2008
28              Expert discovery cutoff:	October 3, 2008

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1 Dispositive Motions to be heard by: October 28, 2008  
 2 Settlement Conference before Magistrate Chen: By October 2008  
 3  
 4

5 The parties realize that the Court may not be able to accommodate the schedule  
 6 ordered by the Honorable Martin J. Jenkins. The parties are therefore prepared to discuss  
 7 the scheduling for this case with Your Honor at the upcoming Case Management  
 Conference.

8 **18. Trial**

9 The parties anticipate a seven to ten day jury trial. As set forth above, a trial date has  
 10 already been set for November 10, 2008. However, to the extent that the Court will be  
 11 resetting the trial date, the parties request that the trial date not be reset until at least mid-  
 12 January 2009 due to personal commitments in the latter half of November and December.

13 **19. Disclosure of Non-party Interested Entities or Persons**

14 Pursuant to Civil L.R. 3-16, the undersigned certify that as of this date, other than  
 15 the named parties, there is no such interest to report

16  
 17 Dated: April 23, 2008 BANNING, MICKLOW & BULL  
 18 Attorneys for Plaintiff  
 SAMUEL GARRETT

19  
 20 By /S/ Edward M. Bull, III  
 Edward M. Bull, III

21  
 22 Dated: April 23, 2008 COX, WOOTTON, GRIFFIN,  
 23 HANSEN & POULOS, LLP  
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